



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 4, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0408

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Lawful and Proper)
# 2	6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Lawful and Proper)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employees may have engaged in an out of policy pursuit and that Named Employee #1 may not have had sufficient reasonable suspicion to stop the subject vehicle at the outset.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) was on patrol with a student officer – Witness Officer #1 (WO#1) – when they ran the license plate on a car. The car was parked near the gas pump at a gas station and the female occupant had just walked inside of the station, leaving the car running and unattended. By running the license plate, NE#1 determined that the most recent owner of the car had two open warrants, including a felony DOC escape arrant premised on underlying felony domestic violence (DV) protection order violation and a felony criminal impersonation warrant. NE#1 also determined that he was the respondent in an active order of protection. NE#1 believed that the female who had walked away from the car largely matched the description of the protected party. NE#1 later articulated that her leaving the car unattended and running caused him to believe that someone else – potentially the owner – was inside. The car had tinted windows and NE#1 could not definitively tell if anyone else was inside. Based on available



information concerning the female, she did not have a suspended license or any open warrants. Given his observations, NE#1 called another unit – Named Employee #2 (NE#2) – to the scene.

The female returned to the car and pulled out of the gas station and NE#1 and WO#1 followed. NE#1 told WO#1, who was driving the patrol vehicle, to stop the car. WO#1 activated the patrol vehicle's emergency lights and sirens to effectuate the stop, but the car fled. NE#1 and WO#1 pursued, as did NE#2, who had since arrived. NE#1 later noted that he felt it possible that the female was being forced to flee the traffic stop under duress and this increased his belief that a pursuit was warranted.

Based on a review of In-Car Video (ICV), the pursuit lasted for approximately two minutes and 47 seconds. It occurred on large thoroughfares with light traffic. From OPA's watching of the ICV, there were only three other vehicles on the road at the time. The pursuit was eventually terminated by NE#2, who was then the lead car, when their speeds reached 80 miles per hour and the subject car turned off its lights. At that time, the risk of the pursuit was believed to outweigh the need to stop the car. A supervisor at the East Precinct monitored the pursuit and did not terminate it prior to NE#2 doing so. The supervisor did not contemporaneously identify the pursuit as being inconsistent with policy. NE#1, WO#1, and NE#2 all completed documentation concerning the pursuit.

During the later chain of command review, the pursuit was approved by the Sergeant and Acting Lieutenant. However, the Acting Captain raised concerns with the pursuit – specifically, the lawful authority for the vehicle stop – and concluded that OPA review was warranted. The Assistant Chief of the Patrol Bureau also raised concerns with the reasonable suspicion supporting the initial stop of the car. This investigation ensued.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

SPD Policy 13.031-POL-4 states that "officers will not pursue without articulable justification that the public safety need to stop the eluding vehicle outweighs the inherent risk of pursuit driving. The policy indicates that "[t]he circumstances justifying the decision to pursue an eluding vehicle must be articulable at the time the officer initiates the pursuit. (SPD Policy 13.031-POL-4.) Lastly, the policy explains when a pursuit is not justified, including where the crime is one or a combination of the following: traffic violations/civil infractions; misdemeanors/gross misdemeanors; property crimes; and the act of eluding alone. (*Id.*)

During the chain of command review of this incident, the Named Employees' Sergeant and Acting Lieutenant both deemed the pursuit to be consistent with policy. In the Acting Lieutenant's review, she reasoned that there was reasonable suspicion to stop the vehicle and, when it fled, the pursuit was consistent with policy because "the officers believed that a DV Kidnapping and Violation of No Contact order may be taking place." As further justification for the pursuit, the Acting Lieutenant noted that "the officers believed the owner of the vehicle who had two outstanding felony warrants, was inside the car." The Acting Lieutenant opined that the Named Employees exercised due care and that they terminated the pursuit as soon as the risk grew too high.

While agreeing that the officers exercised due care during the pursuit, the Acting Captain disagreed that there was reasonable suspicion ("lawful authority") to stop the subject car at the outset. He concluded that the facts



articulated by NE#1, while in good faith, were insufficient to justify the stop. As such, he deemed the entirety of the pursuit to be out of policy.

As discussed more fully below and while a close call, OPA finds that there was reasonable suspicion to stop the subject car. In this respect, OPA concurs with the Sergeant and the Acting Lieutenant. Based on this reasonable suspicion combined with the female's decision to flee, OPA finds the pursuit to have been justified. OPA notes that, as NE#1 explained, the female did not have any record that explained why she would flee. As such, this provided further factual support for their belief that there may be an ongoing DV protection order violation and, potentially, a DV kidnapping unfolding.

In reaching this finding, OPA commends the Acting Captain for critically reviewing this matter and for flagging this case for OPA review. However, OPA's review of the totality of the evidence – including a fuller record than that which was available to the chain of command – yields the conclusion that the pursuit was justified. Lastly, all of the reviewers found that the officers exercised due care during the pursuit and OPA agrees. When the risk of the pursuit grew too high it was rightfully terminated.

For all of the reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

#### **Named Employee #1 - Allegation #2**

##### ***6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion***

SPD Policy 6.220-POL-2 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-1.) SPD Policy further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct." (*Id.*) Whether a Terry stop is reasonable is determined by looking at "the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop." (*Id.*) While "[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it "cannot provide the justification for the original stop." (*Id.*)

OPA understands the Assistant Chief's concerns with the attempted Terry stop of the subject car and OPA believes that whether reasonable suspicion existed is a call close. However, in evaluating this question, OPA notes that reasonable suspicion is not a high standard. It is less than probable cause and an officer need only demonstrate the reasonable belief of the substantial possibility that criminal activity is afoot.

Here, NE#1 determined that the registered owner of the car had multiple felony warrants and an open order of protection, he identified that the female who exited the car matched the description of the protected party, and he saw her exit the car and leave it running and unattended when she walked into the store. This suggested to him that someone else – perhaps the owner – was in the car at the time. However, NE#1 could not see into the car given its tinted windows and the fact that it was dark out.



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OPA finds that NE#1's inferences were reasonable under the circumstances and that he articulated sufficient facts to reach reasonable suspicion, even if barely. In reaching this finding, OPA notes that NE#1 could have stopped the car regardless given that he also identified the failure to transfer title and that this likely would have been a permissible mixed-motive stop. OPA further notes that this is not a case where NE#1 was attempting to stop the vehicle to enforce a minor traffic violation or to investigate drug activity. Instead, he legitimately believed that the female may be at risk of harm and wanted to effectuate the stop to ensure her safety. Together, this convinces OPA that the stop did not violate policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #1**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

For the same reasons as discussed above in the context of NE#1, OPA also finds that NE#2's pursuit of the subject car was consistent with policy. OPA notes that, even had it found the pursuit to be improper, this still would not have warranted a Sustained finding against NE#2 given OPA's past precedent concerning backing vehicles during pursuits. However, under the circumstances here, this is purely academic.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**